Supreme Court, U. S.
F I L E D
MAY 12 1975
MICHAEL RODAK, JR., CLERK

NO. 74-1363

OAK CLIFF-GOLMAN BAKING CO.

VS.

NATIONAL LABOR RELATIONS BOARD

SUPPLEMENTAL APPENDIX PP. 6-17

(ORDER OF THE BOARD)

207 NLRB No. 138 D-8263
Dallas, Texas

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

OAK CLIFF-GOLMAN BAKING COMPANY

and

BAKERY & CONFECTIONERY WORKERS
INTERNATIONAL UNION OF AMERICA,
AFL-CIO, LOCAL NO. 1111

Case 16-CA-4532

SECOND DECISION AND ORDER

On March 21, 1973, a panel of the National Labor Relations Board composed of Members Fanning, Jenkins, and Penello issued its Decision and Order in this proceeding finding in agreement with the Decision of Administrative Law Judge Henry L. Segal[1.] that Respondent had violated Section 8(a)(5) and (1) of the Act.[2.] Thereafter, Respondent filed with the United States Court of Appeals for the Fifth Circuit a petition to review the Board's Order.

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1. The title of "Trial Examiner" was changed to "Administrative Law Judge" effective August 19, 1972.

2. 202 N.L.R.B. No. 72.

On August 24, 1973, while the case was pending before the Court, the Board, sua sponte, requested the Court to remand the case to it for further consideration. On September 12, 1973, the Court granted the request. Thereafter, Member Penello excused himself from participating in the decision and the Board decided that the case should be considered de novo by a panel composed of Chairman Miller and Members Fanning and Jenkins. Accordingly, and pursuant to Section 3(b) of the National Labor Relations Act, the Board duly delegated its authority in this proceeding to a panel composed of the three members named supra.

The Board has considered the entire record in the case and the Decision of Administrative Law Judge Henry L. Segal in light of the exceptions and briefs, and has decided to affirm the rulings,

findings, and conclusions of the Administrative Law Judge, to the extent consistent with the decision herein, and adopt his recommended Order.

The complaint alleged, the Administrative Law Judge found, and we all agree that Respondent unilaterally modified its collective-bargaining contract with the Union within the meaning of Section 8(d) of the Act and thereby violated Section 8(a)(5) and (1) of the Act. The relevant facts are undisputed.

At all times here relevant, Respondent was a party to a bargaining contract with the Union which was effective by its terms until July 22, 1972, and which covered its employees as part of a multiemployer unit. In October 1971,[3] Respondent's business

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3. Unless otherwise stated, all dates hereafter mentioned are for 1971.

faced a dire financial crisis. Respondent decided that, rather than close its operations and lose good employees, it would attempt to remain in operation by reducing the wages and salaries of all its employees. It informed the Union of its financial plight and of its wage reduction decision at meetings held October 5 and 8, and asked for the Union's "blessings." The Union refused to agree to the wage cuts primarily because it did not wish to open the contract's provisions with respect to other employees in the multiemployer unit. Respondent nonetheless implemented its decision and, commencing with the payroll of October 14, began paying its employees both in the unit and outside of it at reduced rates of pay. On October

18, the Union filed a formal grievance about Respondent's reduction of the wages of the unit employees and, on October 18, it filed the charge initiating this proceeding.

In resisting the complaint, Respondent sought at the outset to obviate any decision on the merits on two grounds. We discuss each seriatim.

First, Respondent claimed that the policy enunciated by the Board in Collyer Insulated Wire, A Gulf and Western Systems Co., 192 NLRB 837, required deferral of the basic differences between Respondent and the Union in this case to the contractual grievance-arbitration procedures which, as noted supra, the Union had invoked before it filed the charge herein. The Administrative Law Judge rejected this claim. Although all of us agree his con-

clusion was proper, Chairman Miller differs with his colleagues as to the proper predicate for that conclusion. He would find, in agreement with the Administrative Law Judge's reasoning, that deferral is inappropriate in this case because there is no claim, and indeed no room for any finding, that the contract's terms even arguably authorized the action taken by Respondent here. Obviously therefore, unlike Collyer, the question of whether Respondent's action was in violation of its statutory obligations does not turn on any underlying dispute over the meaning of the contract's terms. Chairman Miller would not, therefore, find that determination of the violation issue in this case on its merits conflicts with the policy enunciated in Collyer. As Members Fanning and Jenkins do not, however, subscribe to the

policy enunciated in Collyer (for reasons they have expressed in their dissent in that and in subsequent cases), they would not defer to arbitration here in any event.

Next, Respondent claimed that its action in reducing wages was at most a breach of contract with the Union of a kind which Congress has indicated should be remedied by other processes and ultimately by the courts.[4] The Administrative Law Judge rejected this claim as well. All of us agreed he did so properly, not only for the reasons set out in his

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4. Respondent here refers to certain statements contained in the House Conference Report (No. 510, p. 41) on the Taft-Hartley Amendments to the Act (H.R. 3020), and to the Board's acknowledgment, in its decisions, that a breach of contract is not ipso facto an unfair labor practice. See e.g. American Vitrified Products Company, 127 NLRB 701; United Packinghouse Workers of America, CIO, and Locals 49, 86, 93, 102 and 104 (Wilson & Co.,Inc., 89 NLRB 310.

Decision but also for the following additional ones.

It cannot be gainsaid that an employer's decision in midterm of a contract to pay its employees for the remainder of the contract's terms at wage rates below those provided in the collective-bargaining agreement affects what is perhaps the most important element of the many in the employment relationship which Congress remitted to the mandatory process of collective bargaining under the Act. Because so substantial a portion of the remaining aspects of a bargaining contract are dependent upon the wage rate provision, it seems obvious that a clear repudiation of the contract's wage provision is not just a mere breach of the contract, but amounts, as a practical matter, to the striking of a death blow to the

contract as a whole, and is thus, in reality, a basic repudiation of the bargaining relationship. We believe the jurisdiction granted us under the Act clearly encompasses not only the authority but the obligation to protect the statutory process of collective bargaining against conduct so centrally disruptive to one of its principal functions- the establishment and maintenance of a viable agreement on wages.

Turning to the merits, Respondent alleges there is no room in the facts for any finding that its conduct violated the "good-faith" bargaining standards imposed upon it by the Act. It urges, in this respect, that its sole motive and intent in reducing wages was to meet an economic crisis;

that its action in fact had the salutary effect of preserving for employees jobs they would otherwise have lost; and that it advised the Union fully of all the reasons for its action and of the financial facts supporting it. We have no doubt that Respondent's description of its motive and its object is a truthful one. But we have here a situation where these considerations are irrelevant. The unambiguous language of Section 8(d) of the Act explicitly: (1) forbade Respondent's midterm modification of the contract's wage provisions without the Union's consent; and (2) granted the Union the privilege it exercised to refuse to grant consent. No where in the statutory terms is any authority granted to us to excuse the commission of the prescribed action because of a showing

either that such action was compelled by economic need or that it may have served what may appear to us to be a desirable economic objective. To borrow the words of the Supreme Court, what must here be recognized is that "(t)he law is its own measure of right and wrong, of what it permits, or forbids, and the judgment of the courts (and of the Board) cannot be set up against it in the supposed accommodation of its policy with the good intention of parties, and, it may be, of some good results." Standard Sanitary Mfg. Co. v. U. S., 226 U.S. 2049. From all this, it follows that Respondent's unilateral modification of the wage provisions of its contract violated Section 8(a)(5) and (1) of the Act as alleged.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommendation Order of the Administrative Law Judge and hereby orders that Respondent, Oak Cliff-Golman Baking Company, Dallas, Texas, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

Dated, Washington, D. C. December 26, 1973.

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Edward B. Miller, Chairman

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John H. Fanning, Member

(SEAL) _____
Howard Jenkins, Jr., Member

NATIONAL LABOR RELATIONS BOARD